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OFFICE OF PETITIONS

In re Patent No. 6,961,641 :
Issued: November 1, 2005 : DECISION UNDER 37 CFR
Application No. 09/723,564 : 1.705(d)
Filed: November 28, 2000 :
Atty. Dkt. No. 6270/48 :

This is a decision on the "REQUEST FOR RECONSIDERTAION OF THE PATENT TERM ADJUSTMENT," filed November 3, 2005. This matter is being treated under 37 CFR 1.705(d) as a timely filed application for patent term adjustment (PTA).

The application for PTA under 37 CFR 1.705(d) is hereby **DISMISSED**.

The above-identified application matured into U.S. Patent No. 6,961,641 on November 1, 2005. The patent issued with a PTA of 794 days. Patentees argue that the patent is entitled to an additional adjustment for the Office's failure to issue the patent within three years of the application's date of filing.

Specifically, patentees argue that the patent is entitled to an additional adjustment of 376 days, or, in the alternative, 148 days in accordance with 37 C.F.R. § 1.704(b) for the Office's failure to issue the patent within three years from the date upon which the application was filed.

At the time of issuance, the application was entitled to an adjustment of 794 days as indicated on the patent.

If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B) (and 37 C.F.R. § 1.704(b)), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the application that overlap with the days of patent term adjustment accorded prior to the issuance of the patent


will not result in any additional patent term adjustment. See, 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Red. Reg. 21704 (April 22, 2004).

Accordingly, the patent is entitled to an adjustment of 794 days as indicated thereon.

Receipt is hereby acknowledged of the required application fee of \$200.00.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date indicated above. Extensions of time for reconsideration under 37 CFR 1.136 will not be permitted.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Alesia M. Brown at (571) 272-3205.



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